

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1244 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? YES
2. To be referred to the Reporter or not? NO :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? NO
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge? NO :

RAMESHCHANDRA KANTILAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR MB GANDHI for Petitioner
MS PUNANI AGP for Respondent No. 1
MR BT RAO for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/06/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner herein challenges the order of preventive detention dated 17th December, 1998, made against the petitioner by the District Magistrate,

Gandhinagar, under the powers conferred upon him under section 3 of the Gujarat Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as 'the Act').

Mr. Gandhi, the learned advocate appearing for the petitioner has challenged the order of detention on the grounds - (a) the representation made to the State Government by the petitioner on 7th January, 1999, has not been replied to; (b) the decision of the Advisory Board has not been communicated; (c) the Detaining Authority has not considered whether the purpose could be served by resorting to less drastic measure like cancellation of license; (d) the petitioner has not been supplied the copies of the documents relied upon by the Detaining Authority or the documents which would be necessary for making an effective representation against the order of detention.

Mr. Gandhi has submitted that the petitioner runs a fair price shop. An inspection was carried out on 25th November, 1998, and several documents like stock register, bill book, books of accounts, etc. were seized by the concerned authority. The said documents still are in the possession of the concerned authority, and without the said documents, the petitioner could not make effective representation against the order of detention.

The petition has been contested both by the State Government as well as the Central Government through their respective advocates. Though the State Government has not filed the counter-affidavit, the learned AGP has relied upon the records of the matter and has submitted that the representation made by the petitioner on 1st January, 1999, was received by the Government on 7th January, 1999 and was dealt with day-to-day by the concerned Section Officer of the Department, Deputy Secretary, Secretary and the Minister from 8th January, 1999 till 15th January, 1999. Upon receipt of the papers from the office of the Hon'ble Minister, the representation was rejected under order dated 19th January, 1999 and was communicated to the petitioner on the same day and the endorsement of the receipt has been made by the petitioner himself. She has also submitted that the decision of the Advisory Board has been communicated to the petitioner on 15th February, 1999. The order of detention is communicated along with the grounds of detention and it does appear that while making the said order, the Detaining Authority has relied upon several entries made in the stock register, stock

received by the petitioner, the actual stock found at the time of the search. Upon perusal of the papers supplied to the petitioner along with the grounds of detention, it appears that along with the order of detention and the grounds of detention, the petitioner has also been served with the copy of the Panchnama, seizure memo, copies of the relevant entries from the stock register, copies of several bills for purchase of kerosene, copies of relevant entries of the Kerosene stock register, and copy of the stock register for the month of November, 1998 etc. Thus, it appears that the relevant entries on which the reliance has been placed and the entries which were the root cause for the seizure of the stock and the detention of the petitioner, have been supplied to the petitioner along with the order of detention. The petitioner's contention that he had been deprived of fair opportunity to make effective representation against the order of detention can not be accepted. Mr. Gandhi's contention that the Detaining Authority has not considered the less drastic measure also can not be accepted. The grounds of detention supplied to the petitioner do disclose that the Detaining Authority has considered the possibility of resorting to other remedy. However, after considering the relevant factors, the Detaining Authority has decided to pass the order under the Act. It is apparent that the Detaining Authority has explored the possibility of other remedies available under the relevant law. However, availability of other remedies not being the bar against the exercise of powers under the detention law, the order of detention is not vitiated .

No other ground is urged before me. In view of the above discussion, I find no merit in either of the contentions raised by Mr. Gandhi.

Petition is, therefore, dismissed. Rule is discharged.

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JOSHI